

1 BARBARA J. PARKER, City Attorney - SBN 069722
OTIS McGEE, JR., Chief Assistant City Attorney - SBN. 71885
2 DAVID A. PEREDA, Supervising Attorney - SBN 237982
One Frank H. Ogawa Plaza, 6th Floor
3 Oakland, California 94612
Phone: (510) 238-4921 (Pereda)
4 Fax: (510) 238-6500
Email: DPereda@oaklandcityattorney.org
5 (186075)

6 Attorneys for Defendant
CITY OF OAKLAND
7

8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10

11 ALLENE HUTCHINSON, et al.

12 Plaintiffs,

13 v.

14 CITY OF OAKLAND, et al.

15 Defendants.
16

Case Nos. 3:15-cv-05011-RS

**JOINT CASE MANAGEMENT
STATEMENT & [PROPOSED]
ORDER**

Date: July 21, 2016

Time: 10:00 a.m.

Courtroom: 3, 17th Floor

17 D.H., et al.

18 Plaintiffs,

19 v.

20 CITY OF OAKLAND, et al.

21 Defendants.
22

Case No. 3:16-cv-016699-RS

23
24 The parties respectfully submit this Joint Case Management Statement pursuant to the
25 Standing Order for All Judges of the Northern District of California (November 1, 2014) and
26 Civil Local Rule 16-9.

1 **1. JURISDICTION AND SERVICE**

2 The Court has subject matter jurisdiction over Plaintiffs' claims arising under 42
3 U.S.C. §1983. Under 28 U.S.C. § 1367, the Court has supplemental jurisdiction over
4 Plaintiffs' state law claims.

5 The parties are working together to substitute in an officer for a Doe defendant.
6

7 **2. FACTS**

8 **Plaintiffs' Statement**

9 On June 6, 2015, in or around the area of the Lakeshore off ramp of the westbound
10 Highway 580, in the City of Oakland, California. That morning, thirty year old Mr.
11 Demouria Hogg was inside of this car when heretofore unknown Officers employed by and
12 acting in the course and scope of their employment with the Oakland Police Department and
13 the City of Oakland violently confronted him.

14 Without warning, at least one respondent officer repeatedly and unjustifiably
15 discharged her department issued firearm at the person of Mr. Demouria Hogg, inflicting
16 several gunshot wounds, which proved to be fatal. Following the shooting, the involved
17 officers denied immediate medical care to Mr. Hogg in a manner that demonstrated
18 deliberate indifference to his constitutional rights. At no time during the course of these
19 events did Mr. Hogg pose any reasonable threat of violence to the defendant officers, nor
20 did he do anything to justify the force used against him, and the same was deadly,
21 excessive, unnecessary, and unlawful.

22 Shortly after 7:30 am, on June 6, 2015, Mr. Hogg died as a direct and proximate
23 result of gunshot wounds inflicted upon his person by the respondent officers.

24 ///

25 ///

26 ///

1 Plaintiff further contends that the involved defendant officers of the Oakland Police
2 Department were negligently trained and retained by the Oakland Police Department and
3 the City of Oakland in that they had known propensities for acting in the fashion that they
4 did with respect to this incident, all of which was a proximate cause of injuries to Mr. Hogg
5 and his family members. Additionally, Plaintiffs contend that Mr. Hogg's death were the
6 proximate result of unconstitutional policies and customs of the Oakland Police Department
7 and the City of Oakland. Especially as it relates to the manner by which Oakland Police
8 officers deal with barricaded subjects.

9
10 **The City's Statement of Facts**

11 On June 6, 2015, at around 7:18 a.m., the Oakland Fire Department ("OFD")
12 received a call about a car that was stopped on the 580 West Lakeshore off-ramp, near
13 Lakeshore Avenue. The idling car was facing a local farmer's market that was setting up.
14 Responding OFD personnel saw that Demouria Hogg was sitting in the driver's seat,
15 seemingly not alert, and that a gun with an extended magazine was sitting in plain view on
16 the passenger's seat. OFD alerted police.

17 By 7:37 a.m., Oakland Police officers took positions behind Hogg's car. The
18 officers established a perimeter and a designated arrest team. Using a loudspeaker, the
19 officers identified themselves, announced that they knew that Hogg was armed, and issued
20 commands to Hogg. The officers did this many times. The officers also struck the car with
21 beanbag rounds. Next, officers approached the car to break the passenger-side windows.
22 The windows were broken. But due to the type of tint, they did not shatter. When this
23 happened, Hogg moved and said something. The officers followed up with more
24 announcements, commands, and beanbag rounds. Hogg never complied.

25 At around 8:44 a.m., two teams of officers set out to remove Hogg from the car.
26 Once the officers were at the car, the lethal cover officer saw Hogg reaching toward the

1 passenger seat. The officer yelled “Don’t move!” three times. When Hogg was still
 2 reaching, the officer fired two shots. One struck Hogg in his lower left rib cage. At the
 3 same time, another officer deployed a Taser probe. Staged first responders immediately
 4 began to render medical aid. Unfortunately, Hogg died from the gunshot wound.

5 6 **3. LEGAL ISSUES**

- 7 i. Whether OPD officers unreasonably seized Mr. Hogg—Fourth Amendment.
- 8 ii. Whether OPD officers used excessive force against Mr. Hogg—Fourth
 9 Amendment.
- 10 iii. Whether OPD officers denied medical care to Mr. Hogg—Fourth
 11 Amendment.
- 12 iv. Whether OPD officers violated Plaintiffs’ substantive due process rights.
- 13 v. Whether OPD officers interfered with Plaintiffs’ familial association.
- 14 vi. Whether a City practice or policy was a moving force in the deprivation of a
 15 constitutional right.
- 16 vii. Whether OPD officers falsely arrested Mr. Hogg.
- 17 viii. Whether OPD officers battered Mr. Hogg.
- 18 ix. Whether OPD officers’ conduct fell below the applicable standard of care.

19 20 **4. MOTIONS**

21 The parties may file dispositive motions as to some or all of the issues.

22 23 **5. AMENDMENT OF PLEADINGS**

24 The parties will stipulate to amending the pleadings to substitute a Doe defendant
 25 and to add a guardian ad litem.

1 **6. EVIDENCE PRESERVATION**

2 The parties will take all necessary steps to preserve all evidence, including
3 electronically stored data.

4
5 **7. DISCLOSURES**

6 The City made served its initial Rule 26 disclosures; the City has agreed to extend
7 the deadline for Plaintiffs to serve their initial disclosure.

8
9 **8. DISCOVERY**

10 On May 2, 2016, this Court entered a stipulated protective order. The City is
11 voluntarily producing materials. In addition, the City will respond to discovery that Plaintiffs
12 propounded.

13
14 **9. CLASS ACTIONS**

15 Not applicable.

16
17 **10. RELATED CASES**

18 One of the mothers of Mr. Hogg's children filed a separate action, *Teandra Butler, et*
19 *al. v. City of Oakland, et al.* 16-01669 LB. The City answered the complaint on April 25,
20 2016. On June 6, 2016, the Court related these cases. Dkt. No. 29.

21
22 **11. RELIEF**

23 Plaintiffs seek special damages, general damages, punitive damages, attorney's fees,
24 and costs.

1 **12. SETTLEMENT AND ADR**

2 Plaintiff is willing to participate in Private Mediation. The parties agree to a
3 settlement conference with a Magistrate Judge.

4
5 **13. CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES**

6 Plaintiffs decline the assignment of a Magistrate Judge for trial and entry of
7 judgment in this case. The City consents to the assignment of a Magistrate Judge for all
8 purposes.

9
10 **14. OTHER REFERENCES**

11 Not applicable.

12
13 **15. NARROWING OF ISSUES**

14 The parties agree to meet and confer on stipulations that may narrow the issues and
15 on potential bifurcation of issues, claims or defenses.

16
17 **16. EXPEDITED TRIAL PROCEDURE**

18 Not applicable.

19 ///

1 **17. SCHEDULING**

2

| 3 Date | Event |
|----------------------------|--------------------------------------|
| 4 August 12, 2016 | MSC |
| 5 December 18, 2016 | Close of Fact Discovery |
| 6 January 15, 2017 | Last Day to Serve Expert Disclosures |
| 7 February 13, 2017 | Close of Expert Discovery |
| 8 March 27, 2017 | Last Day to Hear Dispositive Motions |
| 9 April 24, 2017 | Trial |

10

11 **18. TRIAL**

12 Each side requests a jury trial no sooner than in March 2017.

13

14 **19. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS**

15 Local Rule 3-15 “does not apply to any governmental entity or its agencies.” L. R.
16 3-15(a). Plaintiffs are aware of no disclosure to make under the Rule.

17

18 **20. PROFESSIONAL CONDUCT**

19 The attorneys of record for the parties have reviewed the Guidelines for Professional
20 Conduct for the Northern District of California.

21

22 **21. OTHER**

23 At the City’s request, the parties are meeting and conferring about the form of future
24 pleadings. The City would like to explain this issue to the Court at the Case Management
25 Conference.

26

1 Dated: July 14, 2016

BARBARA J. PARKER, City Attorney
OTIS McGEE, JR., Chief Assistant City Attorney
DAVID A. PEREDA, Supervising Attorney

4 By: /s/
5 DAVID A. PEREDA
6 Attorneys for Defendant
7 CITY OF OAKLAND

8 Dated: July 14, 2016

9 *DOUGLAS / HICKS LAW, APC*

11 By: /s/
12 JAMON R. HICKS
13 Attorneys for Plaintiffs
14 ALLENE HUTCHINSON, et al

14 By: /s/
15 ADANTE POINTER
16 Attorneys for Plaintiff
17 TEANDRA BUTLER, et al

18 **ELECTRONIC CASE FILING ATTESTATION**

19
20 I, David Pereda, am the ECF user whose identification and password are being used
21 to file the foregoing documents. Pursuant to Civil Local Rule 5.1(i), I hereby attest that
22 concurrence in the filing of these documents has been obtained from each of its Signatories.
23

24 Dated: July 14, 2016

/s/ David Pereda
David Pereda